

Clarification of Requirements for Inclusion of Continuous Emission Monitoring Provisions in State Implementation Plans

MEMORANDUM

EC-G-1998-037

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FROM:

Director, Division of Stationary Source
Enforcement

TO:

Enforcement Division Directors, Regions I-X

Air and Hazardous Materials Division
Directors, Regions I-X

During the course of a recent survey of state continuous emission monitoring (CEM) regulations for existing stationary sources, the following question arose concerning the applicability of 40 CFR Part 51, Appendix P, which requires

CEM at four categories of existing sources (power plants, sulfuric acid plants, nitric acid plants, and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries):

Appendix P requires CEM at the four listed sources if they exceed certain size thresholds and, in the case of NO_x CEM, power plants and nitric acid plants if they are located in areas designated nonattainment for nitrogen dioxide. If a state, due to the size thresholds, has no Appendix P sources, or if a state has no areas designated nonattainment for nitrogen dioxide, must the state nonetheless promulgate a CEM regulation pursuant to 40 CFR 51.19(e) in case a source exceeding the threshold is subsequently constructed in that state or in the event an area is later designated nonattainment for nitrogen dioxide?

The question arose because among the reasons some states have given for not having complete Appendix P regulations are that the sources in those states do not meet the size thresholds or that there are no areas in the states designated nonattainment for nitrogen dioxide.

It is our view that a state need not promulgate CEM regulations to apply to Appendix P sources not yet in existence in the state. Appendix P by its terms permits states, in their CEM regulations, to exempt from its coverage sources which would be subject to any NSPS requiring CEM. All four of the source categories covered by Appendix P would, if new, be subject to NSPS continuous monitoring requirements. Should a source meeting the Appendix P size threshold be subsequently constructed in a state, it would be governed by the CEM provisions of the applicable NSPS. Coverage under Appendix P would therefore be unnecessary to assuring the continuous monitoring of that new source.

With regard to the absence within a state of areas designated nonattainment for nitrogen dioxide, a state need not require NO_x monitoring under Appendix P for power plants or nitric acid plants where there are currently no nonattainment areas for nitrogen dioxide. A reading of Sections 2.1.3 and 2.2 of

Appendix P reveals that the presence of a nonattainment area for nitrogen dioxide is so much a part of the description of the covered source categories that the absence of such an area would preclude existing power plants and nitric acid plants from Appendix P coverage for NO_x monitoring. There being no covered sources for NO_x monitoring, no regulations need be enacted to require such monitoring.

In order, however, to encourage states to assess their CEM regulations and to examine those sources covered by them, we will suggest to the working group presently involved in further developing the Agency's CEM requirements that 40 CFR 51.19(e) a Appendix P be amended similar to 40 CFR 60.23(b) for NSPS, that it has no existing sources of the type covered by the CEM requirements and therefore need not have completed Appendix P regulations. A procedure of this sort would enable the Agency to better monitor both source and state compliance with CEM regulations for existing sources.

If you have any questions on this matter, please feel free to contact Mark Silvermintz (FTS 755-2570) in this Division.

Edward E. Reich

cc:

Richard Rhoads Director, CPDD

Joseph Sableski, CPDD

bcc:

Lou Paley

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